

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal No:
CA/HCC/0047/2025**

The Hon. Attorney General
Attorney General's Department
Colombo-12

**High Court of Puttalam
Case No. HC/124/2019**

COMPLAINANT

Vs.

1. Rajapaksha Mudiyanseilage Nevil
Wasantha alias Ajith
2. Rajapaksha Mudiyanseilage Seetha
Sriyani

ACCUSED

AND NOW BETWEEN

Rajapaksha Mudiyanseilage Nevil
Wasantha alias Ajith

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Nimal Muthukumarana for the Appellant.**
Dishna Warnakula, DSG for the
Respondent.

ARGUED ON : **17/02/2026**

DECIDED ON : **14/05/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) and the 2nd Accused were indicted by the Attorney General on the following charge:

On or about 31st January 2014, the accused committed the murder of Wickrama Arachchilage Pabilis Nihal which is an offence punishable under Section 296 read with Section 32 of the Penal Code.

As the Appellant and the 2nd Accused opted for a non-jury trial, the trial commenced before the judge and the prosecution had led six witnesses and marked productions P1- P4 and closed the case. The Learned High Court Judge having been satisfied that the evidence presented by the prosecution warrants a case to be answered, called for the defence and explained the rights of the accused.

The Appellant and the 2nd Accused had opted to make a dock statement and closed their case. Having considered the evidence presented by both parties, the Learned High Court Judge had convicted the Appellant under Section 297 of Penal Code on the basis of knowledge and sentenced him to 08 years rigorous imprisonment with a fine of Rs.20,000/-. The fine was subject to a default sentence of 06 months simple imprisonment.

The 2nd Accused was acquitted from the charge.

Before commencement of the trial on 30.09.2020, the Appellant through his Counsel informed the court that after considering the evidence going to be adduced by the prosecution, he was willing to tender a plea under Section 297 of the Penal Code. However, the prosecution had informed Court that they want to proceed with the trial.

The background of the case *albeit* briefly is as follows:

According to PW1, Nirosha Kumari who is the wife of the deceased, on the day of the incident when the deceased was at the road, the Appellant had come there, and an argument had erupted between them, and the Appellant had dealt a blow on the deceased which had cut the deceased's leg. The witness admitted that both the deceased and the Appellant were very good friends. She had identified the knife at the trial.

After the assault, when the witness had gone to her house to bring water for the deceased, the 2nd Accused had come there and induced the Appellant to cut the deceased again. Even though the Appellant and the deceased were good friends, there was a dispute which had existed between them with regard to performing sorcery designed to harm to the Appellant.

PW2 also narrated the same evidence given by PW1. Additionally, this witness had said that he did not see the 2nd Accused at the scene of crime.

PW3, Priyadharshani has witnessed the Appellant and the deceased fighting each other at the road in front of the deceased's house.

According to the JMO who held the postmortem examination, it was noted that the death had occurred due to shock and severe bleeding from the cut injury of the posterior and upper outer aspect of the leg caused by a heavy and sharp long bladed weapon. The JMO further remarked that the victim was under the influence of alcohol at the time of the incident according to the Government Analyst.

The exception 4 to Section 294 (Murder) of the Penal Code states as follows:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner”.

Explanation: - It is immaterial in such cases which party offers the provocation or commits the first assault.

In the case of ***Gurudeniya Lekamgedara Nishantha Bandara v. Attorney General*** (S.C. Appeal No.62/2008), it was held:

“The following requisites must be satisfied:

- 1. it was a sudden fight;*

2. *there was no premeditation;*
3. *the act was committed in a heat of passion; and*
4. *the assailant had not taken any undue advantage or acted in a cruel manner”*

H.S.Gour in the “Penal Law of India” 11th Edition 2006 states:

"Pre-meditation may be established by direct or positive Evidence or by circumstantial evidence. Evidence of pre-meditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of meditation."

Section 297 of the Penal Code states as follows:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

In this case the Learned High Court Judge had very correctly considered the evidence given by the prosecution witnesses and arrived at the finding under the second limb of Section 297 of the Penal Code.

Considering all the circumstances of this case, I set aside the sentence imposed on the Appellant and substitute it with a term of 03 years rigorous

imprisonment. The fine imposed by the learned High Court Judge will remain the same. Additionally, I impose a compensation of Rs.200,000/- payable to the family of the deceased. In default, 01-year simple imprisonment is imposed.

As the Appellant has been in prison since the date of conviction by the Learned High Court Judge, I order the sentence imposed by this Court to be operative from 16/01/2025.

Subject to the above variation in the sentence, the appeal is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Puttalam along with the original case record.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL